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RECORDING REQUESTED BY:

Recorded
Official Records
County Of
Marin
JOAN C. THAYER
Recorder

REC FEE .00

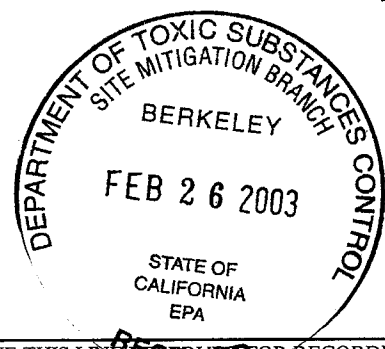
201 Third Street Associates, LLC
980 Fifth Avenue
San Rafael, California 94901

12:15PM 15-Jan-2003

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Page 1 of 14

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Site Mitigation Branch



SPACE ABOVE THIS LINE RECEIVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: 201 Third Street Site
Assessors Parcel Number 14-151-11

This Covenant and Agreement ("Covenant") is made by and between 201 Third Street Associates, LLC (the "Covenantor"), the current owner of property situated in San Rafael, County of Marin, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (State of California)(the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code (H&SC) section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

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ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling approximately 0.88 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded on the north by Third Street and on the south by the San Rafael Canal in the County of Marin, State of California. The Montecito Plaza shopping center is directly west of the site. The San Rafael High School is located to the north, across Third Street. This property is more specifically described as County Assessor's Parcel No. 14-151-11.

1.02 The property is a vacant lot formerly owned and occupied by the Marin/Sonoma Mosquito Abatement District (the District). While operating at the site between 1939 and 1981, the District used, mixed and stored various pesticides. The majority of the site is paved with asphalt with the exception of the southern end of the property which consists of gravel at the surface.

1.03 Hazardous substances such as pesticides including dichlorodiphenyl trichloroethane (DDT), dichlorodiphenyl dichloroethane (DDD), dichlorodiphenyl dichloroethylene (DDE), and Total Petroleum Hydrocarbons (TPH) were detected in the soil. Low to trace concentrations of these chemicals were also detected in groundwater. A Preliminary Endangerment Assessment and Removal Action Plan were prepared for the site. The site remediation consisted of soil excavation; and placement of approximately four feet on average of clean fill material, base material and two inches of asphalt over the clean fill (the "Cap") and installation of groundwater monitoring wells. Operation and maintenance activities of the Cap and groundwater monitoring system will be carried out pursuant to an Operation and Maintenance Agreement entered into between the Department and the Owner. A map of the site, showing the location of the groundwater monitoring wells, is attached hereto as exhibit "B" and incorporated by this reference.

1.04 As described in the Remedial Activities Report, all or a portion of the subsurface soils at a depth of 4 feet or more from the surface of the Property contain hazardous substances, as defined in H&SC section 25316. Based on the Preliminary Endangerment Assessment (PEA), the Department concludes that use of the Property as a school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concludes that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial use.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective Provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471;

(b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessor encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

(a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.

(b) A hospital for humans.

(c) A public or private school for persons under 21 years of age.

(d) A day care center for children.

4.02 Prohibited Activities. The following activities shall not be conducted at the Property:

(a) Raising of food (cattle, food crops);

(b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

4.03 Non-Interference with Cap and Groundwater Monitoring Wells. Covenantor agrees:

(a) All uses and development of the Property shall preserve the integrity of the Cap and the groundwater monitoring wells.

(b) The Owner shall provide the Department written notice at least fourteen (14) days prior to any activities that may disturb the Cap and the groundwater monitoring wells (e.g. building, filling, excavation, grading, removal, trenching, filling, earth movement, or mining) at the Property. In the event of any such work Owner shall immediately upon completion thereof restore the Cap and any fill removed during the work and/or provide an equivalent impermeable surface.

(c) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and the groundwater monitoring wells and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04 Soil Management

(a) Activities that will disturb the soil at or below four feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall not be permitted without prior review and approval by the Department and must be performed pursuant to a Soil Management Plan and a Health and Safety Plan approved by the Department.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06 Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement Plan shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plan until the Department determines that no further Operation and Maintenance is required.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Nothing in this paragraph shall require the Owner to remove any improvements existing on the Property as of the date of execution of this Covenant. Violation of this Covenant shall be grounds for the Department to file civil or

criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Marin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

201 Third Street Associates, LLC
980 Fifth Avenue
San Rafael, CA 94901
Attention: Dennis Fisco

To Department:

Barbara J. Cook, P.E., Chief
Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

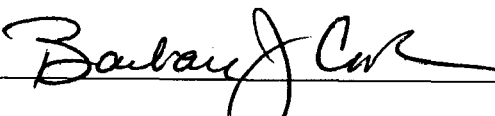
Covenantor: 201 THURD STREET ASSOC. LLC

By: 

Title: MANAGING MEMBER

Date: 1/6/03

Department of Toxic Substances Control - State of California CAL/EPA

By: 

Title: Branch Chief

Date: 1/14/2003

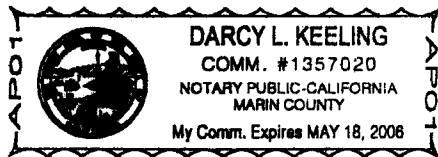
ACKNOWLEDGMENT

STATE OF California)
)
COUNTY OF Marin)

Darcy
On 1/06/03, before me, Keeling, personally appeared Willis K. Polite Jr.,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that they executed the same in their
authorized capacity(ies), and that by their signatures(s) on the instrument the person(s), or the
entity upon behalf of which the persons(s) acted, executed the instrument.

WITNESS my hand and official seal.

(seal)



Darcy L. Keeling
Notary Public

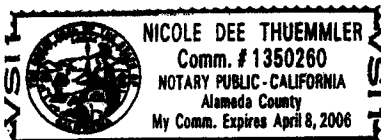
ACKNOWLEDGMENT

STATE OF California)
)
COUNTY OF Alameda)

On Jan. 14, 03, before me, Nicole Thuemmler, personally appeared Barbara J. Cook,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that they executed the same in their
authorized capacity(ies), and that by their signatures(s) on the instrument the person(s), or the
entity upon behalf of which the persons(s) acted, executed the instrument.

WITNESS my hand and official seal.

(seal)



Nicole Dee Thuemmler
Notary Public

Handwritten mark

EXHIBIT "A"
PROPERTY DESCRIPTION

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LEGAL DESCRIPTION

PARCEL ONE:

BEGINNING at a point on the Southerly line of Third Street, (Point San Pedro Road), at the Northeasterly corner of that certain tract of land conveyed by the San Rafael Development Company to Chas. O. Jensen by Deed recorded March 14, 1905 in Book 99 of Deeds at Page 385, Marin County Records; thence running North 15° 19' East on a prolongation of the Easterly line of said tract, 53.62 feet to a point; thence North 64° 23' West 101.7 feet to a point which is North 15° 19' East 23.07 feet from the Northwestern corner of the above mentioned tract; thence South 15° 19' West 23.07 feet to the Southerly line of Third Street and thence South 48° 43' East along said Southerly line of Third Street, 111.3 feet to the point of beginning.

PARCEL TWO:

BEGINNING at a point in the Southerly line of Third Street; said point being at the Northeasterly corner of that certain tract of land conveyed by Jas. L. Flood, et al, to the E.K. Wood Lumber & Mill Company by a Deed dated March 14, 1905 and recorded in Book 91 of Deeds at Page 311, Marin County Records; running thence along the said Southerly line of Third Street, South 48° 43' East 111.3 feet to a stake; thence leaving Third Street and running South 15° 19' West 218.3 feet, more or less to the Northerly bank of the "Canal"; thence Westerly along the Northerly bank of said canal, 100 feet to the Southeasterly corner of the tract of land conveyed to the E.K. Wood Lumber & Mill Company, first hereinabove mentioned; thence along said last mentioned tract, North 15° 19' East 269.3 feet, more or less, to the point of beginning.

EXCEPTING from Parcel Two above that portion described by that certain Deed executed by the Mosquito Abatement District No. 1, a public corporation, to the City of San Rafael, a municipal corporation, recorded July 20, 1960 in Book 1383 of Official Records at Page 459, Marin County Records.


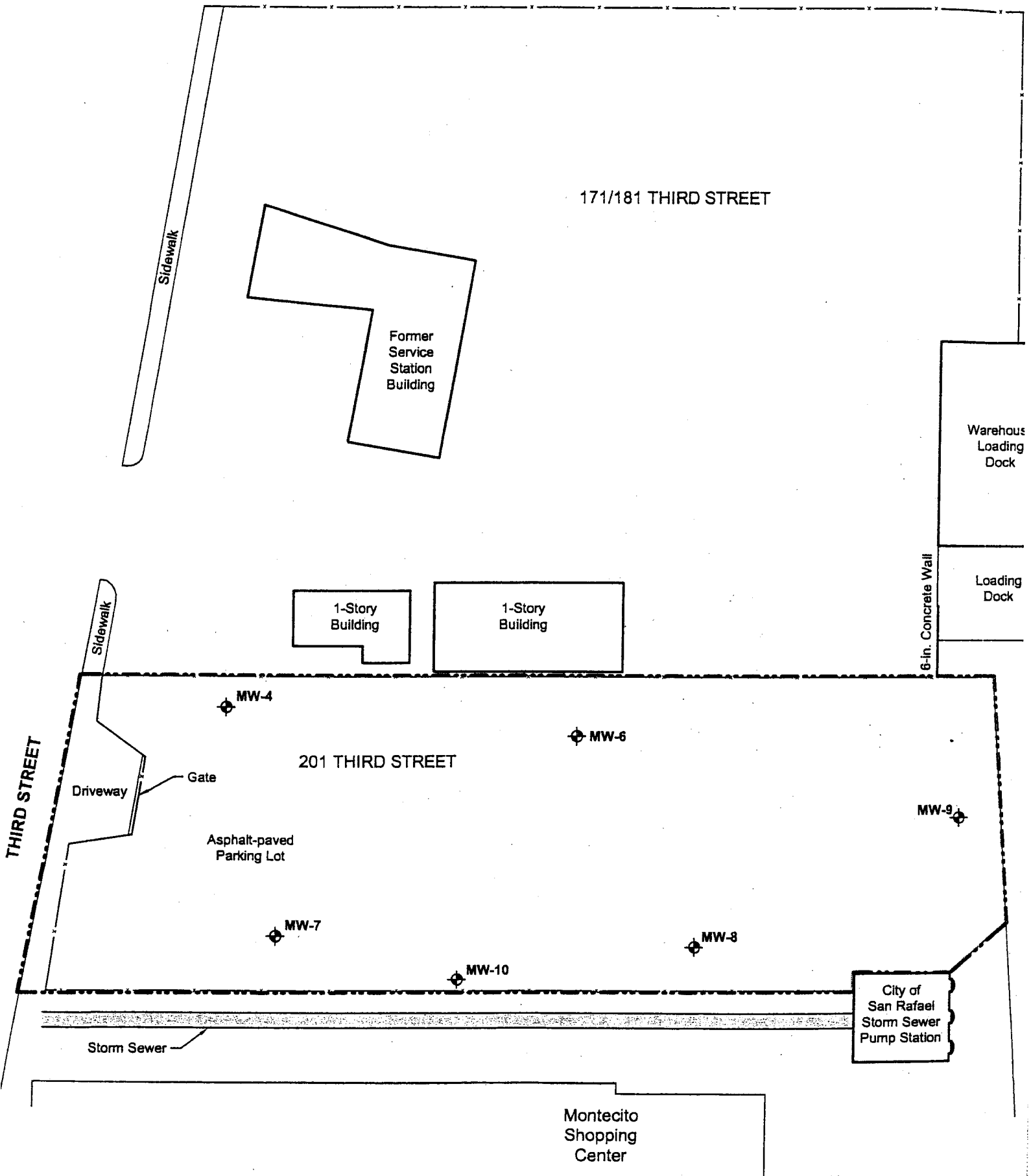


EXHIBIT "B"
SITE MAP SHOWING LOCATION OF MONITORING WELLS

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Handwritten signature or mark.